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Counsel for Defendant Google LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S REPLY IN SUPPORT
OF MOTIONS TO SEAL AND REMOVE
DOCUMENTS (DKTS. 1098, 1099, 1100)**

Judge: Hon. Yvonne Gonzalez Rogers

1 Plaintiffs do not oppose sealing the majority of the confidential and proprietary information
 2 at issue in Google’s motions, *see* Dkt. 1101-1 (Proposed Order) at 2–3, and the unopposed portions
 3 should be sealed for the reasons set forth therein, *see* Dkts. 1099, 1100. Plaintiffs oppose sealing
 4 only three categories of information: (i) “information . . . regarding the number of data event records
 5 impacted by th[e] settlement;” (ii) the name of an internal Google project; and (iii) Plaintiffs’
 6 damages expert Michael Lasinski’s purported estimates of Google’s revenue loss due to a feature in
 7 Incognito mode that blocks third-party cookies by default, which is based on highly confidential and
 8 competitively sensitive Google data that this Court has previously ordered sealed. *See* Dkt. 1101
 9 (“Opp.”).

10 ***Google withdraws its sealing request as to categories (i) and (ii):*** Google has in good faith
 11 considered Plaintiffs’ arguments—including the importance of public access to information that
 12 “will help class members and the public evaluate the merits of the settlement” and the fact that
 13 category (i) has already been published by major news outlets and cannot readily be removed from
 14 the public sphere. *See* Opp. 2–3. Google agrees to withdraw its request to seal categories (i) and (ii)
 15 listed above. In doing so, however, Google notes its grave concern with the implications of
 16 Plaintiffs’ argument that “[d]ozens of news outlets have already reported on” certain information
 17 Google sought to seal. *See* Opp. 3. A party seeking to publicize confidential or competitively
 18 sensitive information should not be able to evade a meritorious sealing motion simply by including
 19 that information in a public filing and then opposing a timely motion to redact confidential material
 20 on the basis that it is too late to prevent its dissemination.¹

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 22 _____
 23 ¹ Plaintiffs’ accusations (at Opp. 1, 3) that Google did not raise specific sealing concerns during the
 24 24 hours Plaintiffs gave Google to review their motion, and purportedly “fail[ed] to promptly seek
 25 sealing at the time the approval motion and settlement agreement were filed,” are specious. Google
 did not expect Plaintiffs to exclude its confidential information, *much of which is already subject to*
sealing orders, from its motion to seal (Dkt. 1097). When Google realized Plaintiffs’ mistake, it
 promptly moved to redact the relevant material—three days *before* its response to Plaintiffs’ sealing
 motion was due under Local Rule 79-5(f).

1 ***The Court should grant Google’s request to seal category (iii):*** Plaintiffs fail to rebut
 2 Google’s compelling reasons for sealing its commercially sensitive internal metrics and financial
 3 data. Indeed, the Court has already ordered that material sealed *with Plaintiffs’ assent*. When
 4 Plaintiffs filed Mr. Lasinski’s expert report with their class certification motion, they recognized
 5 that it contained Google’s confidential information and *they* moved to file it under seal. Dkt. 608.
 6 Google filed a declaration in support of Plaintiffs’ sealing motion (Dkt. 643), Plaintiffs filed no
 7 opposition, the Court granted the motion (Dkt. 804 at 15), and the relevant financial data remains
 8 redacted on the public docket (Dkt. 643-11). But now that Plaintiffs want to publicly boast about
 9 (and grossly inflate) the value of the settlement, they have unilaterally decided to file the same,
 10 previously sealed information publicly, without alerting Google in advance or seeking to meet and
 11 confer.

12 Plaintiffs argue that “[t]he calculations Google proposes redacting are . . . *based on*
 13 methodologies and figures the Court already discussed in its class certification order.” Opp. 2–3
 14 (emphasis added). But the Court’s summary description of Mr. Lasinski’s methodology and his
 15 bottom-line damages figures (neither of which Google seeks to seal here) is a far cry from revealing
 16 the internal metrics that Mr. Lasinski used in his calculations. To the contrary, the Court ordered all
 17 such metrics sealed and never publicized them in any order.² Dkt. 804 at 15.

18 Contrary to Plaintiffs’ assertion, sealing Google’s proprietary information would not prevent
 19 Plaintiffs from continuing to publicly tout their claimed (but massively inflated) valuation of the
 20 settlement. In their motion to approve the settlement, immediately following their discussion of
 21 Google’s confidential information, Plaintiffs conclude that “these two changes alone conservatively
 22 total between \$4.75 billion and \$7.8 billion.” Dkt. 1096 at 16; Dkt. 1097-1 at 16. Because these

23 _____
 24 ² As an illustrative example, Plaintiffs put a dollar figure on Google’s annual revenue loss from
 25 blocking third-party cookies in Incognito mode, Dkt. 1096 at 13, citing paragraph 35 of Dkt. 608-9.
 But Dkt. 608-9 is sealed in its entirety, and the public version redacts the figure Plaintiffs publicly
 reveal in their settlement approval motion, Dkt. 643-11 at ¶ 35.

1 figures are sufficiently far removed from Google's sensitive internal metrics, Google has not sought
 2 to seal them. Nor has Google sought to seal Plaintiffs' general description of how they arrived at
 3 these values.³

4 For the foregoing reasons and those set forth in its motions, Google respectfully requests
 5 that the Court grant Google's motions as modified by this reply.

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23 ³ Though Google does not seek to seal these figures, it does not endorse their accuracy either. To
 24 the contrary, Mr. Lasinski's calculations are methodologically flawed, *see* Dkt. 661-3 (Google's
 25 *Daubert* Motion), and Plaintiffs' characterizations of the settlement value are nothing more than
 puffery calculated to support their forthcoming fee application, *see* Dkt. 1102 (Google's Non-
 Opposition Statement) at 2.

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